UNITED
NATIONS

E

Economic and Social
Council

Distr
GENERAL

E/CN.4/2000/SR.28
12 July 2000

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 April 2000, at 3 p.m.

Chairman	Mr. SIMKHADA	(Nepal)
later	Mr. IBRAHIM	(Sudan)

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The meeting was called to order at 3.10 p.m.

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 4) (continued)

Statement by Mrs. Mary Robinson, United Nations High Commissioner for Human Rights

1. Mrs. ROBINSON (High Commissioner for Human Rights) reported to the Commission on Human Rights on her mission to the north Caucasus region of the Russian Federation between 31 March and 4 April. She had visited Ingushetia, Dagestan and Chechnya and had had a series of meetings in Moscow.

2. In seeking the visit, she had had in mind her mandate as High Commissioner for Human Rights, namely to protect all rights, prevent human rights violations throughout the world and engage in a dialogue with Governments, bearing in mind the universality of international human rights and humanitarian law. She had also had in mind the Commission's calls to the Russian authorities in 1995 and 1996, a period when grave violations of human rights had occurred in Chechnya and, in particular, the Chairman's statement of 24 April 1996 drawing the attention of the Russian authorities to a number of issues including the disproportionate use of force by the armed forces of the Russian Federation, the suffering that was being inflicted on the civilian population and the destruction of Chechen towns and villages. At that time, the Commission had requested her predecessor as High Commissioner for Human Rights to continue consultations with the Government of the Russian Federation, in order to secure the implementation of the objectives of the international community.

3. She said she had also been mindful of the position taken by the Russian authorities and in particular their desire to preserve the territorial integrity of the Russian Federation and eliminate a stronghold of international terrorism from Chechnya, within the limits of international law and taking all possible measures to minimize civilian casualties. The Russian authorities had mentioned the establishment of the Office of the Special Representative of the President of the Russian Federation on Protecting Human Rights and Freedoms in Chechnya, the involvement of experts from the Council of Europe and the visits to Chechnya by international delegations and large numbers of foreign correspondents.

4. Before travelling, she had given the Russian Government a list of some of the most serious allegations of human rights abuses in Chechnya, including the concerns expressed by experts of the Commission. She had made a number of statements about the situation in Chechnya, both individually and jointly with the Secretary-General, the High Commissioner on National Minorities of OSCE and the Secretary-General of the Council of Europe.

5. She said that, on her arrival in Moscow on 31 March, she had held meetings with international humanitarian organizations active in the north Caucasus, with Russian NGOs such as the Organization of Soldiers' Mothers, and with international NGOs. She had also had discussions with the Russian Ombudsman, Mr. Oleg Mironov, and with the Special Representative of the President, Mr. Vladimir Kalamanov. She expressed her appreciation for Mr. Mironov's help and that of the federal authorities and the Governments of Ingushetia and Dagestan.

6. On 1 April she had travelled to Nazran, the capital of Ingushetia. There she had visited the Sleptzovskaya camp, where thousands of people were living in tents and railway carriages. One carriage had housed 45 people for six months. The displaced persons, chiefly women, had approached her with appeals for help and had told her of their anxiety at the fate of missing or detained relatives. She had also met President Aushev of Ingushetia, who had described the efforts his Government was making to cope with the flood of internally displaced persons, estimated at 213,000 in total. During her visit, as well as the allegations of mass killings, summary executions, rape, torture and pillage, she had heard detailed first-hand testimony from witnesses of alleged gross violations of human rights in Chechnya; she regarded those accounts as extremely significant, since they bore out the seriousness of the alleged human rights violations by the Russian military, militia and Ministry of the Interior forces in Chechnya. She cited the case of three women, only one of whom had survived, who had been fired at by regular army troops as they returned to their homes, and whose bodies the troops had burnt after pulling off their jewellery. Another woman had said that she had been in Novi Aldi when the OMON special forces had carried out mass killings, including children and elderly people. Lastly, a resident of Grozny, who had been a professor of linguistics at the State University in Chechnya, had described how, on the road out of Grozny, she and her family had found themselves in a queue of several hundred cars that had been bombed by wave after wave of Russian planes, leaving many dead and dismembered bodies. That had happened near the village of Shaami-Yurt. Other witnesses had given detailed accounts of killings at Gekhi-Chu and Tangi-Chu, of torture and ill-treatment of detainees at Urus Martan and near Achkoi Martan, and of killings at Katar-Yurt.

7. She had visited Chechnya on 2 April. It had not been possible to visit a number of the places that she had asked to see, the reasons given being the bad weather and lack of security. She had also asked to visit detention centres other than Chernokozovo, but in the event had visited only a detention centre housing two women being held on charges of looting. In a hospital and the small markets that were starting up, she had managed to speak to some of the remaining residents of Grozny, chiefly women and the elderly. They had complained bitterly of the lack of food and their miserable living conditions. They had also been anxious about relatives who had been detained. Fighters had been criticized for their disregard for the welfare of the civilian population. A point made by many Chechen women was that not all Chechens were "bandits". The scale of the destruction in Grozny was shocking. The sight of a city that had once been famous in the Caucasus region reduced to rubble symbolized the devastating effect of the conflict.

8. She said she had flown from Grozny to Makhachkala, the capital of Dagestan, and met President Magamedov and representatives of his Government. She had also met representatives of women's groups who had denounced the actions of Chechen fighters in strong terms, as the President himself had done. In their view, the international community had shown insufficient interest in the grave violations committed against the people of Dagestan during the incursions by Chechen rebels, which had caused significant loss of life and the displacement of many villagers.

9. In Moscow, she had been received by a number of federal Ministers, including the Minister for Foreign Affairs, Mr. Igor Ivanov, and the deputy commander-in-chief of the armed

forces, General Manilov, who had explained the federal Government's position. It considered that insufficient attention was being paid to the human rights violations committed by Chechen fighters, that violations had indeed been committed by the military, but that they were not systematic and had been duly punished, that the Russian Federation would not be told what to do by outsiders, that the media and international community lacked objectivity; and, lastly, that finishing the war was the top priority for the moment.

10. She said that her visit and the first-hand accounts given to her and confirmed by others were evidence of serious human rights violations. They raised a number of issues that the Commission might wish to consider.

11. In the first place, to deny that the Chechen people like the people of Dagestan, Ingushetia and the Russian Federation, had rights that should be defended or that violations of those rights should be condemned, would be to show selectivity. Secondly, there was the issue of proportionality. A fundamental principle of conflict situations was that the response must be proportionate to the threat and that every care must be taken to avoid civilian casualties. She had not hesitated to raise the issue with the Commission the year before in regard to NATO's bombing of the former Yugoslavia. Neither did she hesitate now to call on the Russian Government to refrain from using heavy weaponry in areas with civilian residents. Lastly, even if the fighting ended soon with a peaceful negotiated settlement, daunting challenges lay ahead in restoring normal economic and social life in the region. The Russian authorities appreciated the humanitarian assistance from the international community, but more was urgently needed and she intended to raise that issue with the Secretary-General and the heads of the United Nations agencies in Rome. The humanitarian agencies' greatest concern was, understandably, the security situation.

12. From the Commission's perspective, the most pressing and immediate issue concerned the adequacy and credibility of the response by the Russian authorities to the scale of allegations of human rights violations in the region. Inquiries had been initiated and nine criminal prosecutions had been opened for offences against civilians. But, bearing in mind the scale of the violations, she believed a different level of response was needed. For that reason, in her discussions in Moscow with the Minister for Foreign Affairs and other members of the Government, she had raised the possibility of establishing a broad-based, independent national commission of inquiry. She fully recognized the complexity of the situation, in particular the seriousness of the crimes committed by the Chechen rebels in Dagestan and the need to put a stop to terrorist activities, but she believed that the primary responsibility for addressing human rights violations rested with the Russian authorities and she had offered to send them models of national commissions of inquiry in case they decided to establish one.

13. The scale of the serious allegations of gross human rights violations warranted international attention and concern. That was particularly true in the light of eyewitness accounts of mass killings, summary executions, rape and pillage, together with a disproportionate use of heavy armaments in populated areas. Recently, in a similar situation, the Commission had supported the establishment of both a national commission of inquiry and an international commission of inquiry.

14. Lastly, she said that United Nations human rights mechanisms, including the Commission, could play an important role in the current context. Visits by special rapporteurs or representatives might be considered in order to obtain a better assessment of the facts. In that connection, she understood that the Representative of the Secretary-General on internally displaced persons and the Special Rapporteur on extrajudicial, summary or arbitrary executions had requested the opportunity to visit the region. She hoped that their requests would receive a positive response. It was up to the Commission to consider whether other mechanisms might have a role to play.

15. Lastly, she welcomed the agreement of the Russian authorities to provide access by the International Committee of the Red Cross (ICRC) to places of detention in Chechnya. She supported the seconding of three experts by the Council of Europe to work with the Special Representative of the President, Mr. Kalamanov. Lastly, she was encouraged by steps to enable OSCE to fulfil the mandate of the Assistance Group.

16. She said she had been invited by the Russian Minister for Foreign Affairs, Mr. Ivanov, to return to Moscow, Chechnya and the north Caucasus in two or three months' time in order to assess the situation.

17. The CHAIRMAN suggested that, with the exception of the Russian delegation, those delegations wishing to take the floor on the subject of the information the High Commissioner for Human Rights had just provided should delay their statements until the following week. If there was no objection, he would take it that the Commission accepted that proposal.

18. It was so decided.

19. Mr. SIDOROV (Russian Federation) said he had listened with interest to Mrs. Robinson's statement. Russia had never concealed from anyone the true facts in the region she had visited. Mrs. Robinson herself knew that to be true. Unfortunately, her statement had contained assertions that were not borne out by the facts. Those assertions were based on allegations concocted by the terrorists.

20. Russia had been compelled to launch an anti-terrorist operation in Chechnya because of its obligation to ensure that individual rights were respected in that region. For years, the fundamental rights of the Chechen people had been systematically violated by Aslan Mashkhadov's regime. Mrs. Robinson herself had obtained testimony concerning such violations - rape, pillage, hostage-taking, etc. - on the part of the Chechens. He invited the Chairman to arrange a video session that would show the atrocities they had committed.

21. Russia had never prevented anyone from visiting the Caucasus. Not a week passed without an international organization asking to visit the region and no such requests were ever refused. More than 70 foreign journalists were accredited in the region. Russia was well aware of the importance of human rights and had never questioned its obligations in that area. It was for that very reason that it had wished to put a stop to terrorist activities in Chechnya, activities that were spreading even beyond the borders of the Russian Federation. The Security Council itself had acknowledged that foreign mercenaries were fighting alongside the Chechen rebels.

22. More than 70 per cent of Russians had participated in the recent Russian elections, which demonstrated that the majority of the population wished Chechnya to remain within the Russian Federation.

23. Lastly, he said that there could be no doubt about the willingness of the Russian authorities to cooperate with international agencies. That was shown by the agreements concluded with the Council of Europe for experts to be sent to the Caucasus region, and with ICRC. Russia would always be open to constructive dialogue, but would reject any interference in what it considered to be its internal affairs.

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(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(agenda item 11) (continued) (E/CN.4/2000/3 and Add.2 and 3, 4 and Add.1 and 2, 9 and Add.1-3, 54, 55, 56 and Add.1 and 2, 57-59, 60 and Add.1, 61/Add.1 and 2, 62, 63 and Add.2-4, 64 and Add.1, 115, 125, 126, 132, 133, 135; E/CN.4/2000/NGO/2, 6, 9, 10, 20, 27, 29, 33, 41, 45, 50, 60, 62-64, 78-81, 91, 92, 95, 104-106, 111, 118, 126, 129-135, 138, 141, 143; E/CN.4/Sub.2/1999/27; A/54/177 and Corr.1)

24. Mr. BASSIOUNI (Independent expert), introducing his report (E/CN.4/2000/62), prepared in accordance with Commission resolution 1999/33, on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, said that, in order to prepare a revised version of the draft guidelines and principles on the subject, he had first assessed the previous drafts of the principles and guidelines elaborated by Mr. van Boven and compared them with other United Nations norms and standards concerning victim redress, specifically the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, pertinent provisions of the Rome Statute of the International Criminal Court and other relevant United Nations norms and standards. He had also benefited from the foundation provided by prior reports, the comments of several Governments on the earlier report, and those of various United Nations bodies, intergovernmental organizations, ICRC and NGOs.

25. He had held two consultative meetings in Geneva for all interested Governments, intergovernmental organizations and NGOs, on 23 November 1998 and 24 May 1999 respectively. On the basis of these consultations and prior comments, he had circulated a first draft of his revision of the principles and guidelines on 1 June 1999 to all Governments, intergovernmental organizations and NGOs for their comments, and a second revised draft on 1 November 1999. He had received comments on these drafts from a number of States, and from ICRC, NGOs and several experts. He expressed his gratitude in particular to ICRC and the International Commission of Jurists for their learned comments.

26. In preparing the basic guidelines and principles, he had drawn in part on the standards currently in use in the world's major legal systems and in part on extant norms of international law. The text of the guidelines and principles had been drafted in such a way as to make a clear distinction between those standards that were already in force in international law and those which were not yet fully established. Specifically, existing international obligations were expressed in the present and rendered in English by the word "shall", while international legal obligations that were still being developed were expressed in the conditional and rendered in English by the word "should".

27. Section I of the text was entitled "Obligation to respect, ensure respect for and enforce international human rights and humanitarian law". The expression "respect and ensure respect for" was taken from article 1 of the fourth Geneva Convention, which had been ratified by all States. Section I dealt exclusively with the standards of international humanitarian and human rights law that were already in force. Section II, which was entitled "Scope of the obligation", contained a series of obligations incumbent on a State to ensure respect for and enforce international humanitarian and human rights law. Section III dealt with violations of international human rights and humanitarian law that constituted crimes under international law. Such violations entailed an obligation on States not only to prosecute the perpetrators but also to facilitate their extradition, which required judicial assistance and other forms of cooperation. Section IV dealt with statutes of limitations. In that regard, a distinction was made between civil and criminal claims. In criminal matters, statutes of limitations should not apply for prosecuting violations of international human rights and humanitarian law norms that constituted crimes under international law. In civil claims, it was recommended that statutes of limitations should not unduly restrict the ability of a victim to pursue a claim against the perpetrator.

28. The remaining sections of the text of the basic principles and guidelines dealt with the definition of a victim, the treatment of victims and the forms of reparation.

29. Mr. HARAGUCHI (Japan), referring to the question of torture, said that torture by any law enforcement officer should be regarded as a most serious crime. That idea was clearly reflected in Japan's Constitution and Penal Code. The previous June, Japan had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was also participating actively in the Working Group on the draft optional protocol to the Convention and contributed to the United Nations Voluntary Fund for Victims of Torture.

30. With regard to the issue of impunity, Japan welcomed the adoption in July 1998 of the Rome Statute of the International Criminal Court. However, international courts were not the only means of combating impunity at the international level. It was important to remember that,

under a number of international human rights instruments, member States had an obligation not only to punish human rights violations on their territory but also, in some cases, to extend their jurisdiction beyond their national borders. Japan urged all Governments to meet their obligations more fully, especially through judicial cooperation.

31. Japan wished to underline the importance of the activities of the special rapporteurs and thematic working groups for the promotion and protection of human rights. Japan had been cooperating fully with them and regretted that some countries showed an unwillingness to do so. No member State should repeatedly refuse to allow special rapporteurs to visit, always on security grounds.

32. Human rights education was of great importance in the area of civil and political rights. In January, the inter-sessional workshop on the subject organized by OHCHR had recognized that human rights education for those involved in the administration of justice should be regarded as one of the priorities for the Asia-Pacific region. Japan emphasized the importance of disseminating information on humanitarian law to police and military personnel and paid tribute to the role played by ICRC in that regard. Japan would continue to support its activities.

33. Ms. BIE (Norway) said that the rule of law was an indispensable element for the protection of human rights and good governance. The special rapporteurs therefore had a very important role to play and made an outstanding contribution to enhancing public knowledge by highlighting situations that were incompatible with the rule of law.

34. The distribution of power and the independence of the judiciary were the two pillars of democracy. Only through a fair and predictable application of the law at all levels by an impartial, independent judge could individuals secure the necessary protection against infringement of their rights by States. At the international level, Norway had in February 2000 become the seventh State to ratify the Rome Statute of the International Criminal Court. Norway urged all States to take the necessary steps to ratify the Statute.

35. International standards on the prevention of torture had to be genuinely implemented. Countries should enact effective legislation to prosecute and punish individuals who committed torture. That was particularly important for the many groups at risk such as minorities, political opponents, journalists and human rights defenders. All allegations of torture or ill-treatment must be investigated promptly, impartially and thoroughly. Countries should therefore cooperate fully with all international human rights mechanisms. Norway, for example, had been criticized on several points, notably the use of pre-trial detention, by the Committee against Torture and the European Committee for the Prevention of Torture. It had taken note of the criticism and implemented several corrective measures. It urged States to support the Working Group on the draft optional protocol to the Convention against Torture.

36. Freedom of religion or belief was a basic human right. It rightly occupied a central place in the International Covenant on Civil and Political Rights. Norway strongly endorsed the Special Rapporteur's unique role in promoting freedom of religion and believed that sufficient resources should be made available to him to enable him to discharge his mandate. It also believed that it would make sense to change his title to "Special Rapporteur on freedom of religion or belief".

37. Freedom of expression and opinion, including freedom of the press and the media, were basic prerequisites for democracy. Freedom of expression was currently a topic of debate in Norway, in the context of a government report proposing amendments to article 100 of the Norwegian Constitution.

38. Lastly, Norway expressed its great appreciation for the work of NGOs investigating threats to freedom of expression.

39. Ms. PEREZ DUARTE (Mexico) said it was unfortunate that special rapporteurs' reports were frequently distributed very late, as had happened with the report of the Special Rapporteur on Torture. It was also unacceptable that that report did not contain replies from Governments. The Government of Mexico had taken note of the "Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment", contained in the report submitted to the General Assembly by the Special Rapporteur on Torture (A/54/426); they should be given careful consideration.

40. The Mexican Government was giving high priority to efforts to combat torture. Based on the work of the National Commission on Human Rights, it was organizing its action around three major topics: promotion of a human rights culture, consolidation of the legal system and combating impunity.

41. It was making special efforts to further raise the awareness of officials responsible for the administration of justice and for enforcing the law in the area of human rights. Training courses had been organized and more than 4,000 officials had taken part in a workshop on ways of combating torture, for example. Since the enactment in 1991 of federal legislation on the prevention and punishment of torture, state legislatures were reviewing their own rules. The federal and state prosecutors had established a national conference of public prosecutors' offices. At their eighth meeting, held in November 1999, the prosecutors had declared that they were in favour of Mexico signing the second optional protocol to the International Covenant on Civil and Political Rights and of recognizing the competence of the Committee against Torture to receive individual complaints. The problem of torture remained a cause for concern to the Mexican Government. Mexico urged the members of the Working Group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to abandon their maximalist positions and instead seek effective and realistic means of reinforcing the mechanisms for international cooperation in that area.

42. The Mexican Government was also making efforts to combat impunity and corruption. It had launched a crusade against crime and criminality, which had led to a considerable increase in the resources devoted to public safety and a reinforcement of measures to combat corruption. In Chiapas and Guerrero States, offices of the Ministry of National Defence received complaints from the civil population. Article 225 of the Penal Code had been amended in order to punish abuses by judicial officials. The federal Act on public-sector budgets, accounting and expenditure had also been amended to make the federal Government responsible for making reparation for harm or damage, including moral damage, caused by criminal acts committed by officials. National legislation to combat organized crime had been strengthened.

43. Persons in police custody in Mexico were not held incommunicado, as some had claimed. That practice was prohibited under the Constitution. All detainees had the right to speak to a lawyer or person of confidence. Confessions had no probative value in criminal proceedings. The right to a defence was completely in line with article 14 of the International Covenant on Civil and Political Rights. In that regard, the many errors committed in the past had been corrected and the Mexican Government's efforts to ensure the enjoyment of civil and political rights had yielded tangible results.

44. Mr. NDIAYE (Senegal) recalled that Senegal had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 15 August 1986, before it had even entered into force. Under article 6 of the Constitution of Senegal, the individual was inviolable, the State had a duty to respect and protect the individual and everyone had the right to life and physical integrity. The Penal Code contained provisions preventing acts of torture or severely punishing their perpetrators.

45. Senegal's legislation also guaranteed the respect of individual freedoms and the rights of defence, in particular during pre-trial detention and preliminary inquiries. Pre-trial detention was supervised by the Government Prosecutor. The record of the hearing and the custody register should indicate the reasons for the detention and the duration of the inquiries. The detainee was also allowed to speak to a lawyer during the period of detention and request a medical examination. The Government Prosecutor was obliged to authorize such an examination, whether it was requested by the detainee himself, his lawyer or a third party. The provisions of Senegal's legislation therefore went beyond the requirements of the Convention, making Senegal without any doubt a State subject to the rule of law.

46. Senegal's insistence on respect for human rights and its continual strengthening of the rule of law had indeed been recognized by the Committee against Torture in the conclusions and recommendations it had adopted on 1 May 1996, following its consideration of Senegal's second periodic report.

47. Nearly all the commitments undertaken by the Senegalese delegation after the consideration of its second report had been honoured. National human rights training programmes had been established for the gendarmerie, the police, the army and the medical corps. The Government of Senegal had also made a declaration under articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recognizing the competence of the Committee against Torture.

48. Lastly, he welcomed the fact that increasing numbers of States were acceding to the Convention, with the total reaching 118 in 1999.

49. Mr. ATEAGA (Chile) said, on the issue of torture, that Chile was aware of the need to improve the situation of persons deprived of their liberty who were at special risk of ill-treatment. Chile was therefore in favour of the drafting of an optional protocol to the Convention against Torture.

50. As the Special Rapporteur, Mr. Nigel Rodley, had noted in the report he had submitted to the fifty-second session of the Commission, following his visit to Chile, the restoration of

democracy had brought the systematic practice of torture to an end. A great many of the recommendations made by the Special Rapporteur in his report had been implemented. The two successive democratic Governments had taken specific measures, involving, in particular, reform of Chile's legislation in order to prevent and punish the practice of torture. Efforts were currently being made to modify the Penal Code and reform the Code of Penal Procedure with the same aim. Act No. 19567 had entered into force on 1 July 1998, defining torture as an offence subject to very severe punishment, and introducing important preventive measures to protect prisoners. The administration of justice had been modernized, including with regard to the judicial police. Police college curricula had been overhauled and internal control mechanisms established, in order to emphasize ethics and respect for human rights.

51. Lastly, under decree No. 1562 of 22 September 1999, Chile had withdrawn its reservation to article 30, paragraph 1, of the Convention against Torture. In general, the Chilean Government's cooperative attitude had been recognized and welcomed by the Special Rapporteur.

52. Mr. MAXIM (Romania) said that, for the first time in the history of humanity, the majority of peoples had started along the road to democracy, believing themselves to be better prepared in that way to combat poverty, meet the challenges of globalization, develop their economies, protect human rights, strengthen social cohesion and establish peaceful international relations. It was for that reason that notions of democracy were becoming more prominent in multilateral debates, including within the Commission.

53. Romania was one of the countries that had suffered most from the lack of democracy and the consequences of the traumatic episode it had gone through were still being felt. For that reason, Romania, along with other countries in a similar situation, had decided to establish a forum of new or restored democracies. Romania welcomed the Secretary-General's support for the efforts of the Conference of New or Restored Democracies to promote the global process of democratization.

54. Romania fully supported the measures taken by OHCHR to implement Commission resolution 1999/57 entitled "Promotion of the right to democracy" and to promote the right to democracy using the mechanisms at its disposal. Romania also welcomed the launching by OHCHR and UNDP of the Human Rights Strengthening programme (HURIST), designed to help developing countries to integrate human rights concerns into sustainable human development work, ensure good governance and strengthen public institutions.

55. Against that background, therefore, Romania had decided to present the issue of the promotion of democracy in more concrete terms to the Commission at the current session.

56. Mr. AMORIM (Brazil) recalled that, the previous day, the United Nations Secretary-General had invited the Commission to promote transparency and accountability in the management of public affairs with the full participation of all citizens in the decisions of government. As several speakers had pointed out, democracy, for all its imperfections, remained the surest path to the preservation and promotion of human rights, whether civil, political, economic, social or cultural. In that regard, Brazil welcomed the initiative announced by Romania.

57. Democracy was spreading through all regions of the world. Latin America had been going through a peaceful democratic revolution since the 1980s. The Organization of American States (OAS) and Mercosur had adopted mechanisms for the promotion of democracy. In Africa, Senegal had just given an important lesson in democracy through its handover of political power.

58. Free, regular elections were recognized everywhere as essential to democracy. However, there were circumstances in which the electoral process was used to give prominence to essentially undemocratic ideas and practices. Corruption could also corrode democracy. Similarly, genuine democracy could not exist without freedom of expression and assembly or freedom of the press.

59. It was unfortunate that bigotry and racial hatred were also on the rise. Brazil would therefore be submitting a draft resolution highlighting the fundamental incompatibility of xenophobia and racial hatred with democracy. The proposal was not aimed at anyone in particular. No society could yet claim to have eliminated all discrimination based on colour or national or ethnic origin.

60. Every effort must be made to prevent democracy being misused in the service of racism, racial discrimination and xenophobia.

61. Mr. Simkhada (Nepal) resumed the Chair.

62. Mr. CASTRO GRANDE (El Salvador) said that El Salvador had applied itself with determination to the task of peace-building, national reconciliation and the establishment of the rule of law, in particular by setting up an independent judiciary. It had also undertaken to recognize the legitimate demands of the more than 2,000 people who wished to know what had happened to members of their families who had disappeared between 1980 and 1983. In April 1998, the offence of forced disappearance had been included in the Penal Code and a bill on compensation to victims was being drafted. In May 1999, the Committee of Relatives for the Freedom of Persons Detained or Missing for Political Reasons in El Salvador (CODEFAM) had organized a seminar on the disappeared. The NGO Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos and UNICEF had also organized a seminar on children who had disappeared as a result of the armed conflict. On that occasion, the Government had once again committed itself to investigating forced disappearances in El Salvador.

63. His delegation was grateful to the Working Group on Enforced or Involuntary Disappearances for having mentioned in its report (E/CN.4/2000/64) the successes of the Asociación Pro-Búsqueda de Niños y Niñas Desaparecidos, which had found 98 disappeared children and enabled them to rejoin their families in 10 different countries.

64. Mr. BAUMANIS (Latvia) said that States had a duty to ensure that the perpetrators of human rights abuses, wherever they were committed, did not escape human justice. The administration of justice and efforts to combat impunity were no longer merely national issues.

65. Without transparency, the international community would have no chance of assessing the compliance of a given country's court decisions with universal human rights standards. The

judiciary should be impartial, uncorrupted and independent of the legislative and executive powers. In Latvia, the independence of the judiciary was enshrined in the Constitution. The procedure for appointing judges aimed to ensure their independence. In addition, when domestic remedies were exhausted, every Latvian had the right to appeal to the European Court of Human Rights, since Latvia had ratified the European Convention on Human Rights. The Constitution had been amended so that international treaties were directly applicable in the Latvian courts. His delegation was well aware that to restrict judges' independence was to open the door to human rights violations, and it therefore supported the important work of the Special Rapporteur on the independence of judges and lawyers.

66. His delegation also welcomed the adoption of the Statute of the International Criminal Court and believed that there was a possibility of complementarity between a judicial body of that kind and a political body such as the Commission. He recalled that the General Assembly had, by its resolution 2391 (XXIII), adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Latvia firmly supported that principle, regardless of the ideology in whose name such crimes were committed.

67. Mr. MENDONÇA MOURA (Portugal), speaking on behalf of the European Union, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Malta, said that by no means all human beings currently enjoyed all the civil and political rights contained in the Universal Declaration of Human Rights and the international human rights instruments, and which, under the Vienna Declaration and Programme of Action, States were obliged to incorporate into their domestic legal systems and effectively implement.

68. It was vital for member States to cooperate with the international human rights monitoring mechanisms. States that had not yet done so should therefore accede to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and should recognize the competence of the Human Rights Committee to consider communications received under article 41 of the Covenant and the competence of the Committee against Torture to consider communications received under articles 21 and 22 of the Convention. All States should take legislative, administrative and other measures to prevent the practice of torture and ensure that the perpetrators of such acts were brought to justice and that victims obtained compensation. It was important that law-enforcement officers should receive human rights training. In addition, all States should refrain from expelling, returning or extraditing a person to a State where there were substantial grounds for believing that he would be in danger of being subjected to torture, in accordance with article 3 of the Convention against Torture.

69. The European Union was disturbed at the use of arbitrary detention in individual countries. In China, for example, administrative detention and re-education through labour continued to be used on an arbitrary basis. The European Union urged the Chinese authorities to ensure that the rights of defence were observed and not to apply re-education through labour to persons who had merely exercised their fundamental freedoms.

70. The European Union was likewise gravely concerned at the police brutality and ill-treatment that were still often inflicted on detainees around the world and condoned or even actively encouraged by the authorities. Member States of the European Union therefore strongly

supported all action to combat such practices and were major contributors to the United Nations Voluntary Fund for Victims of Torture. Moreover, all European Union member States were signatories to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The European Union was pleased that Bolivia, Belgium, Turkmenistan, Japan and Mozambique had ratified the Convention in the previous year, and congratulated the Committee on the excellent work it had done.

71. The European Union was an active participant in the Working Group on the draft optional protocol to the Convention against Torture. It was essential to establish an independent and effective monitoring mechanism that would prevent the occurrence of torture.

72. The European Union welcomed the elaboration of the "Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment", which should be a fundamental tool for tackling the problem of impunity.

73. The European Union welcomed the excellent work of the Special Rapporteur on torture and urged States to fully cooperate with him. It was pleased that the Special Rapporteur had been able to visit Kenya, Cameroon and Romania during 1999 and that the Chinese Government had invited him to visit China. It regretted that the Governments of Algeria, Bahrain, Brazil, Egypt, India, Indonesia and Tunisia had still not invited the Special Rapporteur to visit their countries despite his requests to do so.

74. The European Union believed that the independence and impartiality of the judiciary were fundamental prerequisites for the effective protection of human rights. It therefore fully supported the work of the Special Rapporteur on the independence of judges and lawyers. It welcomed his visit to Guatemala in 1999 but regretted that the mission to South Africa had had to be called off for financial reasons. The European Union was deeply concerned about the proceedings instituted in Malaysia against the Special Rapporteur and called on the Malaysian Government to abide by the advisory opinion of the International Court of Justice, to the effect that the Special Rapporteur enjoyed immunity from legal process for statements made in his capacity as an independent expert.

75. The European Union fully supported the work of the Special Rapporteur on freedom of opinion and expression. It continued to be concerned at the non-observance of the freedom of opinion and expression in various parts of the world. It was particularly concerned at the harsh sentences recently imposed in China against members of the China Democratic Party and the Falun Gong movement and firmly condemned the fact that in China an individual could be punished merely for having exercised the right to freedom of expression. The European Union therefore called upon the Chinese authorities to observe the principles relating to that freedom in the International Covenant on Civil and Political Rights, to which China was a signatory, and urged it to ratify the Covenant.

76. The European Union similarly condemned the widespread prosecution and harassment of persons because of their religious belief. It particularly emphasized the importance of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on* Religion or Belief and expressed concern at the recent detention and punishment of members of

the Christian church in China. The European Union also condemned the violation of women's rights as a result of intolerance and extremism based on religion. It hoped that the recommendations formulated by the Special Rapporteur on religious intolerance would soon be effectively implemented by all States.

77. Lastly, the European Union vigorously condemned enforced or involuntary disappearances and extrajudicial, summary or arbitrary executions. Impunity remained one of the major causes of such phenomena and the European Union called for effective action to eliminate it. It took note with appreciation of the recommendations contained in the report of the Working Group on Extrajudicial, Summary and Arbitrary Executions. It also welcomed the report submitted by the Working Group on Enforced or Involuntary Disappearances and underlined the importance of all States complying with the Declaration on the Protection of All Persons from Enforced Disappearance. The European Union regretted that some countries had not cooperated appropriately with the Working Group.

78. The European Union hoped that, through the strengthening of States' action to ensure respect for human rights, justice and the rule of law, and of the international machinery for the promotion and protection of human rights, the new millennium would see an improvement in the human rights situation around the world.

79. Mr. KUZNIAR (Poland) said that, of the three inseparable and interdependent elements of the triad mentioned in the Vienna Declaration and Programme of Action - human rights, development and democracy - it was democracy that had been the most neglected in international forums, including the Commission. In order to make up for that neglect, seven States - Chile, the Czech Republic, India, Mali, Poland, the Republic of Korea and the United States - had decided to organize an international conference, entitled "Towards a Community of Democracies", at which 130 States would be represented, to be held in Warsaw from 25 to 27 June 2000. Democracy was the fullest expression of individual aspirations. The advance of democracy throughout the world had been one of the most encouraging developments of the closing years of the second millennium. Democracy was a universal phenomenon, although it took different forms in different places, as the head of the Polish Government, Mr. Tadeusz Mazowiecki, had stressed during the pivotal period of transition from communism to democracy.

80. Democracy was now facing new challenges, including the phenomenon of globalization. Sometimes, economic underdevelopment, social instability, the intensification of internal conflicts and the collapse of State structures reduced democracy to mere electoral mechanisms that had nothing to do with human rights, and to which human rights could even become an obstacle. It was therefore essential to constantly reaffirm the close links that existed between authentic democracy and human rights. It was that belief that had inspired those seven countries to organize the first-ever conference dedicated solely to the topic of democracy. The conference would provide an opportunity to examine the threats to democracy around the world and ways of strengthening democracy in cooperation with regional and international institutions, the heads or representatives of which would be taking part in the Warsaw meeting. The organizers were convinced that the initiative would serve the cause of human rights around the world by strengthening the current wave of democratization.

81. Ms. NASCIMBENE DE DUMONT (Argentina) said that her country was particularly interested in the link between the enjoyment of human rights and democracy. Since taking office at the end of the previous year, the new President of Argentina, Mr. Fernando de la Rúa, had reaffirmed his commitment to the cause of human rights, most significantly by transferring the Under-Secretariat for Human Rights from the Ministry of Internal Affairs to the Ministry of Justice and Human Rights and by establishing in the Ministry of Foreign Affairs a post of special representative for human rights.

82. No country, whatever its Government's good intentions, was free of human rights violations, including the practice of torture and other ill-treatment. Argentina, whose past weighed heavily in that respect, was in favour of all measures to prevent torture, at both the national and the international levels, and wholeheartedly supported the activities of the Working Group on the draft optional protocol to the Convention against Torture. Moreover, the Argentine Government, understanding how important the Commission's special mechanisms were for the effective enjoyment of human rights, had just invited the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on religious intolerance to visit Argentina.

83. Argentina had inherited from its military dictatorship a tragic history of forced or involuntary disappearances. Cognizant of the work done at the time by the Working Group on that subject, the Argentine Government had opposed moves to disband it; it was in favour of reorienting the work of the Group, if necessary amending its mandate in order to make it more effective. Argentina believed it was time to draft a binding international instrument on forced or involuntary disappearances, perhaps drawing on the Inter-American Convention on Forced Disappearance of Persons.

84. The full enjoyment of human rights and the functioning of a genuine democracy were subject to the independence of the judiciary, which was a priority concern of the Argentine Government. In order to combat corruption, the President had established an ethics office under the direction of a former judge. The existence of remedies in justice for human rights violations had already made it possible to shed light on some of the crimes committed by the military dictatorship and on the fate of the disappeared.

85. The Argentine Government had established a compensation scheme for torture victims and families of the disappeared; that was another sign of its willingness to accept its responsibilities in the area of human rights.

86. Her delegation once again expressed its support for the Commission's work and mechanisms.

87. Ms. PEREZ DE PLANCHART (Venezuela) said that Venezuela was proud to be one of the oldest democracies in Latin America and party to all the international and regional human rights instruments; those rights were enshrined in Venezuela's new Constitution.

88. Venezuela believed that democracy and human rights were inseparable. It hoped that the international community would support all countries' efforts to achieve both those goals, by cooperating without judging.

89. Venezuela was committed to the promotion of the active participation of its people in the exercise of democracy; citizens must be actively involved in political life at all levels and not content themselves with being mere electors. In the previous year, Venezuela had suggested to the OAS General Assembly that it should organize a series of study days to consider participatory democracy; the event was to take place in April in Washington and should result in the preparation of a draft declaration to be adopted at the next annual session of the OAS General Assembly.

90. The delegation of Venezuela had co-sponsored the resolution on the right to democracy adopted at the fifty-fifth session of the Commission. Venezuela believed that the international community should embark cautiously, but with determination, on the process of recognizing a fundamental right that was the key to all human rights, and called on the international community to continue with its reflections and actions aimed at achieving the implementation of that right.

91. Mr. MAHMOUD (Observer for Iraq) recalled that Iraq had ratified the International Covenant on Civil and Political Rights in 1970; since then, the Government had devoted itself to promoting those rights through various political reforms or initiatives. The Constitution adopted in 1970 established the rights of all ethnic minorities, including the Kurds, and equality of all before the law. Also in 1970, the State had allowed political pluralism under the National Action Charter and the Charter of the National Progressive Patriotic Front. Members of the National Assembly were elected by universal secret ballot. The Autonomy Act and several other pieces of legislation authorized trade unionism and promoted freedom of association and women's participation in public life. A referendum on the office of the President of the Republic had taken place in 1995 in the presence of many foreign observers.

92. Unfortunately, Iraq's policy of openness and liberalization was hindered by the offensives mounted against it, which had threatened its sovereignty and the well-being of its people for more than 10 years. The situation of continuing aggression had compelled the authorities to take corrective measures in order to protect Iraqi society, but the Government had refrained from declaring a state of emergency, so as to ensure a normal life for its people. It was currently doing its best to maintain the application of the Constitution and of legislation, particularly with respect to freedom of religion and the enjoyment of the freedom of expression, opinion and the press. To that end, the State was committed to guaranteeing the independence of the judiciary and to monitoring the work of the executive.

93. For 10 years, the United States and the United Kingdom had used every means to harm Iraq, in violation of article 20 of the International Covenant on Civil and Political Rights. They sought to overthrow Iraq's political regime and did not hesitate to slander the Government and undermine national unity. They were threatening to renew their military offensive against Iraq.

94. Peace and security were necessary conditions for the protection of civil and political rights. The Iraqi delegation therefore appealed to the Commission to condemn foreign interference of any kind in northern Iraq and to guarantee the restoration of a normal situation that would allow the central authorities to regain their sovereignty and administer the autonomous region that was an integral part of Iraqi territory. It also requested the Commission to call for a halt to the embargo and to the attacks on Iraq.

Statements made in exercise of the right of reply

95. Mr. KANANURA (Rwanda) said he had noted a number of tendentious and unfounded allegations in the statement made by the Minister for Human Rights of the Democratic Republic of the Congo. Rwanda's military engagement in the Democratic Republic of the Congo was purely a response to security considerations: since the end of the civil war, it had been repelling incursions by the Interahamwe and by Congolese Government-backed militias. Calm had now returned to Rwanda, particularly the north-west of the country, as the United Nations Special Representative for Rwanda, Mr. Moussalli, had indicated. The Government of Rwanda was in no way attempting to destabilize the Democratic Republic of the Congo or to plunder it or install Rwandan Tutsis there. The Congolese population included Tutsis in any case. Under the Lusaka ceasefire agreement, all ethnic groups and nationalities in the Democratic Republic of the Congo should be protected by law and have equal rights.

96. His delegation was outraged at the statements made by a minister responsible for human rights concerning the Rwandan genocide and called on all members of the Commission to condemn what amounted to a trivialization of the genocide.

97. Mr. NAHAYO (Burundi) said that Burundi was not involved in the armed conflict in the Democratic Republic of the Congo. On the other hand, it was taking in civilians displaced by the war there. Refugees International, an NGO, had reported a threat of imminent attack by the militias on the Banyamulenge population, spurred on by President Kabila's policy of ethnic confrontation, which looked likely to lead to the collapse of the Lusaka agreements and plunge the country into war once again.

98. Burundi itself was in the throes of a civil war between government forces and FDD-FNL rebels. The reason the Burundi army was watching the Congolese frontier so closely was to prevent the rebels from mingling with the Banyamulenge refugees.

99. Mr. MINAKU (Democratic Republic of the Congo) said he wished to put the record straight on the human rights situation in his country, which was suffering the consequences of the war being waged by Uganda, Rwanda and Burundi. Uninvited foreign troops were occupying Congolese territory, as part of an armed attack. Rwandan, Burundi and Ugandan troops had invaded the east of the country, where they were plundering the natural resources. The 1994 genocide in Rwanda, appalling though it might have been, did not authorize Rwanda to send its army into Congolese territory in pursuit of the perpetrators; that was a serious violation of the Charter of the United Nations. The international community, and in particular the United Nations, should be asking questions about the presence of uninvited armed troops in the territory of the Democratic Republic of the Congo and about the massacres that had taken place in the east of the country.

The meeting rose at 6.05 p.m.